



U.S. Department of Justice

Environment and Natural Resources Division

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05/26/98

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DJ#90-11-2-1109

May 26, 1998



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VIA FIRST CLASS MAIL

Re: United States v. City of Albion, Michigan, et al.,  
Civ. No. 1:97-CV-1037 (W.D. Mich.)

Dear Counsel:

As we previously discussed, enclosed is a draft, proposed Stipulation and Protective Order ("Protective Order") in the above referenced action for your review and comment as discussed below.

The United States requests that the parties execute the Protective Order with the provisions contained therein, prior to the disclosure of certain additional cost and work performed documents supporting costs incurred by U.S. EPA at the Albion-Sheridan Landfill Superfund Site, Calhoun County, Albion, Michigan. These additional documents contain business information that may be entitled to confidential treatment pursuant to 40 C.F.R. Part 2. Consequently, prior to production of the documents, I request that counsel execute the Protective Order, individually, and on behalf of client parties.

The Protective Order contains terms and provisions for handling of the documents under U.S. Environmental Protection Agency regulations entitled, "Disclosure of Confidential Data to Authorized Representatives of the United States and to Potentially Responsible Parties," at 58 Fed. Reg. 458-465, January 5, 1993.

Please note that although the Protective Order will be submitted to the Court for approval and entry, the document is a binding agreement, enforceable as such, upon execution by counsel. Also, pursuant to the regulation, the contractors listed in Annex 1, will be given notice of disclosure of their business information under the terms of the Protective Order. Please note, in addition, that the contractor list is preliminary and may be revised, i.e., by additional or deletion of contractors.

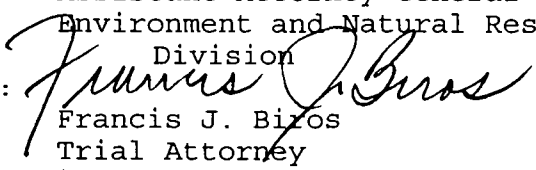
I understand that certain parties may wish to consider whether this Protective Order addresses concerns regarding the exchange of their potentially confidential documents in this action as well. Accordingly, please review this draft Protective Order in that light and provide me with any comments or suggestions regarding any additions/revisions to the document to accommodate any such concerns at your earliest convenience.

If there are any questions regarding this letter or this matter, and to provide comments on the Protective Order, please do not hesitate to contact me by telephone at (202) 616-6552 or fax at (202) 616-6584. Thanks you for your cooperation.

Sincerely,

Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural Resources  
Division

By:

  
Francis J. Bixos  
Trial Attorney

**Overnight Mail Address:**  
U. S. Department of Justice

1425 New York Ave., N.W.  
Washington, D.C. 20005  
(202)616-6552

cc: Kathleen K. Schnieders  
U.S. Environmental Protection Agency  
Region 5 -- CS-29A)  
77 West Jackson Boulevard  
Chicago, Illinois 60604

**DRAFT**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,       )  
Plaintiff,                        )

v.                                        )

Case No. 1:97-CV-1037

Hon. David W. McKeague

CITY OF ALBION, MICHIGAN,       )  
Defendant/Third-Party            )  
Plaintiff,                        )

v.                                        )

COOPER INDUSTRIES, INC. and       )  
CORNING, INCORPORATED,            )  
Third-Party Defendants,          )  
Counterclaimants and                )  
Third-Party Plaintiffs,            )

v.                                        )

DECKER MANUFACTURING                )  
CORPORATION,                        )  
Third-Party Defendant.            )

STIPULATION AND PROTECTIVE ORDER REGARDING CONFIDENTIALITY

Plaintiff, United States of America, on behalf of the United States Environmental Protection Agency (EPA), and the undersigned Defendant/ Third-Party Plaintiff, Third-Party Plaintiffs/ Counterclaimants/Third-Party Defendants and Third-Party Defendant (hereinafter referred to as "Executing Parties") have hereby stipulated that discovery and potential settlement discussions in this case will involve the production of documents which have been

submitted to EPA by various contractors (listed in Annex 1, hereinafter referred to as "submitter(s)") containing information which may be entitled to confidential treatment. In view of this stipulation, the Court finds that good cause exists for the issuance of an order requiring limited disclosure of such information, and that entry of this Order is appropriate pursuant to Federal Rule of Civil Procedure 26(c). Consequently it is hereby **ORDERED**:

1. Plaintiff shall submit the documents containing information which may be entitled to confidential treatment to the Executing Parties and such documents shall be handled in accordance with the terms of this Protective Order Regarding Confidentiality (hereinafter referred to as "Protective Order").

2. As used in this Protective Order, the term "confidential information" means trade secrets or commercial or financial information submitted by a person to the Plaintiff and which may be entitled to confidential treatment under 40 C.F.R. Part 2. This information has not been determined by Plaintiff, under 40 C.F.R. Part 2, not to be entitled to confidential treatment.

3. Any information to be produced by Plaintiff pursuant to this Protective Order shall be stamped conspicuously with the word "CONFIDENTIAL" by the Plaintiff on the top of each page of each

document prior to production to Executing Parties. The transmittal of information designated as confidential shall be done by letter from the Plaintiff stating that the information designated as confidential shall be subject to this Protective Order.

4. Information designated as confidential under this Protective Order shall not be used or disclosed by Executing Parties or any other person subject to Paragraph 7, below, for any purpose other than the preparation for, trial of, and settlement of, this action and any appeal therein.

5. The Executing Parties and Parties' counsel who obtain information designated as confidential hereunder, and any nonparty subject to this Protective Order, shall not disclose or permit disclosure of this information to any other person, including without limitation, any officer, director, employee, agent, or representative of the Executing Parties, Parties' counsel, or any nonparty, except in the following circumstances:

a. Disclosure may be made to employees of Executing Parties or Parties' counsel who have responsibility for the preparation, trial, and settlement of this action or any appeal therein. Any employee to whom disclosure is made shall be advised of, and be subject to, the provisions of this Protective Order prior to such disclosure by executing the Confidentiality Agreement annexed

hereto. Employees do not include persons, firms, or corporations engaged by Executing Parties or Parties' counsel on a contract basis, who shall be subject to the requirements of subparagraph (b) of this Paragraph.

b. Disclosure may be made to consultants, witnesses, experts, or employees of experts (hereinafter referred to collectively as "Expert(s)") employed or otherwise engaged by any Executing Parties or Parties' counsel to assist in the preparation, settlement, and trial of this litigation. Prior to disclosure to any Expert, the Expert must agree to be bound by the terms of this Protective Order by executing the Confidentiality Agreement annexed hereto. A copy of each executed Confidentiality Agreement shall be furnished to the Plaintiff and submitter not less than five (5) business days prior to disclosure of the confidential information to the Expert.

6. Executing Parties, and Parties' counsel, and any other person subject to this Protective Order, who obtains information designated as confidential hereunder, shall take all necessary and appropriate measures to maintain the confidentiality of the information, shall share such information only with persons authorized to receive it pursuant to this Protective Order, and shall retain the information in a secure manner. Except as

provided in Paragraph 5, above, no other person shall be permitted access to the information.

7. Any person who obtains access to information designated as confidential under this Protective Order may make copies, duplicates, extracts, summaries, or descriptions of the information or any portion thereof **only** for the purpose of preparation for settlement negotiations or litigation in this matter. All copies, duplicates, extracts, etc. shall be subject to the terms of this Protective Order to the same extent and manner as original documents obtained which are subject to this Protective Order.

8. Any information designated as confidential under this Protective Order shall be filed with the Court in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption of this litigation, an indication of the nature of the contents of such sealed envelope or container, the word "CONFIDENTIAL," and a statement substantially in the following form:

"This envelope, containing documents which are filed in this case by \_\_\_\_\_ ('the producing party'), is not to be opened and the contents are not to be displayed or revealed except by order of the Court or consent of the producing party."

9. Any unauthorized disclosure of information designated as confidential under this Protective Order shall not result in a



waiver of any submitter's claim of confidentiality.

10. If Plaintiff desires to add contractors to the list in Annex 1, Plaintiff may file written notice with the Court and the Executing Parties of the identities of such contractors. If the Executing Parties do not object within three (3) days of receipt of such notice, the contractors will be added to Annex 1.

11. Within 60 days after termination of this action by judgment, settlement or otherwise, or as may be determined by the Court or Plaintiff:

a. Any person who obtained information designated as confidential hereunder shall assemble and return such information to Plaintiff, including all copies, duplicates, extracts, summaries, or descriptions of the information or portions thereof. Such return shall be certified in writing by the person who obtained the information from Plaintiff. All such information covered by this Protective Order which constitutes the work product of counsel for the Executing Parties shall be destroyed; and

b. The Clerk of the Court shall maintain under seal all papers filed under seal until the Court orders otherwise.

12. Plaintiff and Executing Parties and Parties' counsel agree that this Stipulation and Protective Order, governing the handling of information provided by Plaintiff and designated as

confidential, shall be a binding agreement, enforceable as such upon execution by the parties hereto. The parties agree to submit this Stipulation and Protective Order to the Court for approval and entry as a Protective Order.

Stipulation and Protective Order Regarding Confidentiality  
In the Matter of United States v. City of Albion, Michigan, et al.,  
Civ. No. 1:97-CV-1037 (W.D. Mich.)

FOR THE UNITED STATES OF AMERICA:

Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural Resources  
Division

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Francis J. Biros  
Environmental Enforcement Section  
United States Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044-7611  
(202) 616-6552

OF COUNSEL:

Kathleen K. Schnieders  
U.S. Environmental Protection Agency  
Region 5  
(CS-29A)  
77 West Jackson Boulevard  
Chicago, Illinois 60604  
(312) 353-8912

Stipulation and Protective Order Regarding Confidentiality  
In the Matter of United States v. City of Albion, Michigan, et al.,  
Civ. No. 1:97-CV-1037 (W.D. Mich.)

FOR THE CITY OF ALBION, MI:

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Charles M. Denton (P33269)  
Mark M. Davis (P43529)  
Varnum, Riddering, Schmidt &  
Howlett, L.L.P.  
Bridgewater Place  
P.O. Box 352  
Grand Rapids, Michigan 49501-0352  
(616) 336-6000

Stipulation and Protective Order Regarding Confidentiality  
In the Matter of United States v. City of Albion, Michigan, et al.,  
Civ. No. 1:97-CV-1037 (W.D. Mich.)

FOR COOPER INDUSTRIES, INC. &  
CORNING, INC.:

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Eugene E. Smary (P26811)  
Melvin G. Moseley, Jr. (P44297)  
Daniel K. DeWitt (P51765)  
Warner, Norcross & Judd L.L.P.  
900 Old Kent Building  
111 Lyon Street, N.W.  
Grand Rapids, Michigan 49503  
(616) 752-2000

Stipulation and Protective Order Regarding Confidentiality  
In the Matter of United States v. City of Albion, Michigan, et al.,  
Civ. No. 1:97-CV-1037 (W.D. Mich.)

FOR DECKER MANUFACTURING  
CORPORATION:

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Alan D. Wasserman (P39509)  
Michael L. Caldwell (P40554)  
Fink Zausmer, P.C.  
31700 Middlebelt Road, Suite 150  
Farmington Hills, Michigan 48334  
(248)851-4111

Philip M. Moilanen (P17874)  
Bullen, Moilanen, Klaasen & Swan,  
P.C.  
402 South Brown Street  
Jackson, Michigan 49203-1426  
(517)788-8500

Stipulation and Protective Order Regarding Confidentiality  
In the Matter of United States v. City of Albion, Michigan, et al.,  
Civ. No. 1:97-CV-1037 (W.D. Mich.)

This Protective Order regarding confidentiality is hereby  
Approved and Entered by this Court. Each party to this Order is  
directed to comply with the requirements of this Order.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 1998

\_\_\_\_\_  
Honorable David W. McKeague  
United States District Court Judge

ANNEX 1

Roy F. Weston  
P.O. Box 8500 (S-6175)  
Philadelphia, PA 19178-6175  
Contract No. 68-01-7367

CH2M Hill/Ecology & Environment  
1941 Roland Clarke Place  
P.O. Box 4400  
Reston, VA 22091  
Contract No. 68-01-7347  
Contract No. 68-01-6692

Jacobs Engineering  
251 South Lake Ave.  
Pasadena, CA 91101  
Contract No. 68-01-7351

Planning Research Corporation  
233 N. Michigan Ave.  
Suite 1621  
Chicago, IL 60601  
Contract No. 68-W9-0006

Metcalf & Eddy  
6480 Busch Blvd.  
Suite 200 Columbus, OH 43229  
Contract No. 68-W9-0007



## ANNEX 2

STIPULATION AND PROTECTIVE ORDER  
CONFIDENTIALITY AGREEMENT

The undersigned is currently working at \_\_\_\_\_, which is located at \_\_\_\_\_. During the past year the undersigned has been employed or otherwise engaged as a consultant or contractor by the following entity located at the following address:

The undersigned hereby acknowledges that he/she has read the foregoing Stipulation and Protective Order Regarding Confidentiality ("Protective Order") executed by the attorneys of record for the parties in the action presently pending in the United States District Court for the Western District of Michigan, Southern Division entitled, United States v. City of Albion, Michigan, et al., Civ. No. 1:97-CV-1037 (W.D. Mich.), understands the terms thereof, and agrees, upon threat of penalty of contempt, to be bound by such terms. The undersigned understands that disclosure of information which has been designated as confidential by the submitter of that information may cause substantial harm to the affected business' competitive position. Accordingly, among other responsibilities, the undersigned shall only share such information with persons specifically authorized to receive the information pursuant to the Protective Order, shall retain the information in a secure manner, and shall use such information only for the purposes authorized by the Protective Order. The undersigned understands that the pledge of confidentiality under this Confidentiality Agreement continues after the lawsuit is over. Furthermore, the undersigned understands that a breach of the Protective Order may subject him/her to civil claims for damages and to criminal prosecution under 42 U.S.C. 9604(e) (7) (B).

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

90-11-2-1109

Charles M. Denton (P33269)  
Mark M. Davis (P43529)  
Varnum, Riddering, Schmidt & Howlett, L.L.P.  
Bridgewater Place  
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402 South Brown Street  
Jackson, Michigan 49203-1426

May \_\_, 1998

VIA FACSIMILE AND FIRST CLASS MAIL

Re: United States v. City of Albion, Michigan, et al.,  
Civ. No. 1:97-CV-1037 (W.D. Mich.)

Dear Counsel:

We will be prepared soon to transmit to counsel in the referenced action, additional cost and work performed documents supporting costs incurred by U.S. EPA at the Albion-Sheridan Landfill Superfund Site, Calhoun County, Albion, Michigan.

The documents contain business information that may be entitled to confidential treatment pursuant to 40 C.F.R. Part 2.

Consequently, prior to production of the documents, I request that counsel execute individually, and on behalf of client parties, the Stipulation and Protective Order ("Protective Order") included herewith.

The Protective Order contains terms and provisions for handling of the documents under U.S. Environmental Protection Agency regulations entitled, "Disclosure of Confidential Data to Authorized Representatives of the United States and to Potentially Responsible Parties," at 58 Fed. Reg. 458-465, January 5, 1993.

Please note that although the Protective Order will be submitted to the Court for approval and entry, the document is a binding agreement, enforceable as such, upon execution by counsel. We have taken this approach in the interest of expediting transmittal and review of the cost and work performed documents. Also, pursuant to the regulation, the contractors listed in Annex 1, will be given notice of disclosure of their business information under the terms of the Protective Order.

I request that counsel, upon receipt of the facsimile, prepare an original of the signature page, and upon execution, transmit it by overnight mail to my office. If there are any questions, please do not hesitate to contact me at (202) 616-6552.

Sincerely,

Lois J. Schiffer  
Assistant Attorney General  
Environment and Natural Resources  
Division

By:

Francis J. Biros  
Trial Attorney  
**Overnight Mail Address:**  
U. S. Department of Justice  
1425 New York Ave., N.W.  
Washington, D.C. 20005  
(202) 616-6552

cc: Kathleen K. Schnieders  
U.S. Environmental Protection Agency  
Region 5 -- CS-29A)

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